2542.

SUPREME COURT OF THE UNITED STATES.

No. 227.

JOHN BALDWIN, APPELLANT,

vs.

CHARLES ELY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR WASHINGTON, D. C.

INDEX.

	Original.	Print.
Citation	1	2
Style of court	3	2
Parties	3	2
Bill of complaint	4	2
Affidavit of complainant	9	5
Order for injunction	10	5
Injunction bond	11	5
Injunction	12	6
Order of publication	14	7
Defendant's answer	17	8
Agreement to take testimony	28	12
Same	29	13
Letter from Gardiner to Riggs	29	13
Deposition of James Bolton	30	13
Do. P. G. Gardiner	32	14
Do. G. W. Riggs	38	17
Decree dismissing bill	42	19
Appeal bond	43	19
Appeal prayed and granted	43	20

Gideon, Printer.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Charles Ely, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to an appeal from the decree of the circuit court of the District of Columbia, sitting as a court of equity for Washington county, in a cause wherein John Baldwin is complainant in error and you are defendant, to show cause why the decree rendered against the said John Baldwin should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. W. Cranch, chief judge of the circuit court of the District of Columbia, the 18th day of September, 1849.

Service acknowledged. JOS. H. BRADLEY,
Att'y for C. Ely.

Style of court.

DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty-third day of the same month, in the year of our Lord one thousand eight hundred and forty-six, and of the independence of the United States the seventieth.

Present, the Hon. William Cranch, chief judge; James S. Morsel [and] James Dunlap, assistant judges; Alexander Hunter, esquire, marshal; William Brent, clerk.

In the records of proceedings of the said court, amongst others, were the following, to wit:

Parties.

JOHN BALDWIN
vs.
CHARLES ELY.

Be it remembered that heretofore, to wit, on the second day of February, in the year of our Lord one thousand eight hundred and forty-four, the said complainant, by Richard S. Coxe, esquire, his solicitor, filed in court here the following bill of complaint, to wit:

Bill of complaint.

To the honorable the judges of the circuit court for the District of Columbia, for the county of Washington:

Humbly complaining, sheweth unto your honors, your orator, John Baldwin, that your orator was one of the citizens of the United States having claims upon the Government of Mexico provided for by the convention between the United States and Mexico; that his claims were

25-44-3

presented to the Board of Commissioners organized under said convention, and of the act of Congress in such case made and provided, and adjudicated upon by said board, who awarded to your orator a large sum of money, to wit, one award, dated on or about the 18th December, 1841, and one on or about the 25th February, 1842, as by the terms of said convention, act of Congress, and awards, will more fully appear. And your orator further shews, that after said awards were made, as aforesaid, in his favor, the Treasury Department of the United States, by virtue of authority conferred upon it by Congress, did make and issue to your orator certificates for the amount so awarded, in and by which the United States did promise and undertake to pay to your orator, or his assigns, the sum specified in said certificates respectively, at the said Treasury Department, whenever the same should be received from the Mexican Government into the treasury of the United States, or a proportionate part of the money thus received. And your orator further shews, that among the certificates thus made and issued to him for and on account of said awards, there were three numbered as follows, viz., No. 989, No. 990, No. 991, which were lawfully and equitably the sole and exclusive property of your orator; that your orator had them as such in his lawful possession, and has never given, transferred, or in any way parted with his lawful property in the same. And your orator further shews unto your honors, that there has been received at the Treasury Department of the United States large sums of money for and on account of said awards, paid by the Government of Mexico, whereby your orator, as the owner of said certificates, is lawfully entitled to receive his ratable proportion of the same; that the money so paid and received amounts, as your orator has heard and believes, to nearly, if not quite, twenty per cent. on the amount named in said certificates; that each of said certificates is for the sum or amount of one thousand dollars, being, in all, three thousand dollars; and other payments will probably soon be made on account of the same.

And your orator further shews that, while he was thus in possession as owner of the said three above named certificates, part of a large number so held by him, he wrote his name on the back thereof, but without any words of transfer or assignment, and still continued to hold the same as the lawful owner thereof, and that while the same were thus held by him, the said three certificates, No. 989, No. 990, No. 991, each for the sum of $1,000, were either casually lost by him, or, as he verily believes, clandestinely purloined or stolen from his rightful possession. That your orator, immediately on discovering the said abstraction, consulted counsel, and, in conformity with the advice and instruction of said counsel, notified the Treasury Department by letter, dated February 12, 1843, with a request that payment might be stopped on the same, that the said certificates had been lost, mislaid, or purloined from the possession of your orator; that the Secretary of the Treasury agreed to suspend payment on the same until an opportunity should be afforded your orator to obtain possession of the same, or assert his right to the same by some legal proceedings. And your orator further shews that, not-

withstanding the most diligent inquiries, he was unable to ascertain where said certificates in fact were, or by whom they were held, so that he might institute proceedings to assert his rights to the same, until within a few days since; and he avers that, although the Government of Mexico has paid as aforesaid into the Treasury of the United States large amounts of money on account of said awards, and the said Treasury has publicly advertised to pay, and has paid, to many of the holders of said certificates the amounts respectively due to them on account of the same, yet no individual has, as your orator is informed and believes, and therefore charges, until within a few days, presented or exhibited the said three certificates, so as aforesaid the property of your orator, and asked for payment on the account of the same. And your orator further shews that, on the 29th January, 1844, Wm. S. Parrott, the agent of your orator in this behalf, received a letter from the honorable John C. Spencer, Secretary of the Treasury, hereunto annexed, apprizing the said Parrott that the honorable Osmeyer Baker had addressed said Department in behalf of Charles Ely, of the city of New York, stating that he holds the said three certificates so as aforesaid lost by or purloined from your orator, and claiming payment on account of the same; at the same time apprizing said Parrott that, unless sufficient grounds should be furnished on or before the 5th February instant, he proposed to direct such payment as requested.

And your orator shews that, as the said Osmeyer Baker is a member of Congress, and, therefore, not amenable to the process of this court, and the said Charles Ely is a non-resident, your orator is remediless in the premises, except in this honorable court, to obtain discovery of the right and title which said Ely possesses, or under which he claims; and that said certificates may be delivered up to your orator as obtained from him by fraud or theft. And he prays that said Ely may be required, in this honorable court, to prove and shew how the said certificates were procured from your orator, and for what consideration, and when and where; and that he may be required to produce the same before this honorable court, and be decreed to deliver up the same to your orator, and to desist from all demand of payment on account of the same, or to assign or transfer the same to any other person or party. And that it may please your honors to award the U. S. writ of injunction to be served upon the said Charles Ely, or his agents, if they shall be found, and also upon the honorable John C. Spencer, Secretary of the Treasury of the United States, commanding, enjoining, and restraining them, the said Charles Ely and his agents, to desist from all demand of payment of the said certificates, or any of them, and the said John C. Spencer, from paying or causing or permitting to be paid the said certificates, or either of them, or any part thereof, until the further order of this court; and that your orator may have such other and further relief in the premises as may be agreeable to equity and good conscience. May it please your honors to award the United States writ of subpœna to be directed to said Charles Ely and the said John C. Spencer,

and to direct the usual order for publication against him, the said Ely. And your orator will ever pray, &c.

COXE, *for Complainant*.

Affidavit of the foregoing complainant.

I, John Baldwin, depose and say, that some time during the year 1842, there was lost, mislaid, or purloined from my possession, three certificates of the Treasury of the United States, for Mexican indemnity, numbered as follows, viz., 989, 990, and 991, which were advertised in the Madisonian for six consecutive weeks, during the months of May and June of 1843; said certificates are for one thousand dollars each, bearing interest at the rate of 8 per centum per annum from the date of February 23d, 1842, and for which I never received any valuable consideration, nor ever authorized their circulation.

JOHN BALDWIN.

New Orleans, Feb. 16th, 1844.

Sworn to and subscribed before me, on this sixteenth day of February, one thousand eight hundred and forty-four.

W. J. VASON, [SEAL.]
Com. of U. S. circuit court, La.

Upon the back of the foregoing bill of complaint was the following order, to wit:

Order for injunction.

DISTRICT OF COLUMBIA, *sct.*

To the clerk of the circuit [court] of the said district, for the county of Washington.

Let a subpœna and injunction issue as prayed, the complainant first filing an approved injunction bond in the sum of five hundred dollars.

B. THRUSTON.

Thereupon the said complainant filed in court here the following bond, to wit:

Injunction bond.

Know all men by these presents, that we, John Baldwin, William B. Scott, and William S. Parrott, are held and firmly bound to Charles Ely, in the sum of five hundred dollars, good and lawful money of the United States, to be paid to the said Charles Ely, or his certain attorney, his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us by himself, for and in the whole, our heirs, executors, and administrators, and each of us, firmly by these presents.

Sealed with our seals, dated this thirteenth day of March, in the year eighteen hundred and forty-four.

The condition of the above obligation is such, that if the above

bounden John Baldwin do and shall well and truly prosecute with effect a certain writ of injunction, issuing out of the circuit court of the District of Columbia, for Washington county, in chancery, upon the bill of complaint of the said John Baldwin against the said Charles Ely, and shall well and truly pay all cost and damages which may be sustained by the said defendant by reason of the said injunction, if it shall be dissolved, then this obligation to be void, otherwise to remain in full force and virtue.

JOHN BALDWIN,
By his attorney, W. S. Parrott.
WILLIAM B. SCOTT, [SEAL.]
W. S. PARROTT. [SEAL.]

Sealed and delivered in the presence of—
T. FILLEBROWN, JR.

Witness as to W. B. Scott—
F. FORREST.

March 15th, 1844. This bond and sureties are approved.
B. THRUSTON, *Associate Judge*.

Thereupon the subpœna and injunction issued as prayed, returnable 4th Monday of March instant, to wit:

Injunction.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to the Hon. John C. Spencer, Secretary of the Treasury of the United States, and Charles Ely, greeting:

Whereas John Baldwin has filed his bill of complaint in the circuit court of the District of Columbia, sitting as a court of equity for Washington county, against Charles Ely, and for certain reasons and considerations set forth and contained in said bill you, the said Charles Ely, and your agents, are hereby prohibited and strictly enjoined and restrained from demanding payment from the Treasury of the United States of certificates Nos. 989, 990, and 991, drawn in favor of the said John Baldwin, under the convention between the United States and Mexico, and by him endorsed as particularly set forth and described in the said bill. And you, the said John C. Spencer, are also enjoined and prohibited from paying the same, or causing or permitting the same, or either of them, to be paid, until the further order of the court in the premises.

Hereof fail not, as you will answer the contrary at your peril.

Witness W. Cranch, esq., chief judge of said court, the 1st day of February, 1844.

Issued this 13th March, 1844.

COXE. W. BRENT, *Clerk*.

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-four, comes again into

court here the said complainant, by his solicitor aforesaid, and the marshal of the District aforesaid, to whom the said subpœna was directed, makes return thereof to the court here, that the said Charles Ely could not be found, and that he had served the said writ of injunction on the honorable John C. Spencer, Secretary of the Treasury of the United States, by leaving a copy thereof at his office, with McClintock Young; his chief clerk.

Thereupon the said cause was regularly continued at rules until the fourth Monday of November, 1844, when the court ordered that notice be given to the said defendant of the substance and object of the said bill by publication in the National Intelligencer, in form following, to wit:

Order of publication.

In equity.—Circuit court of the District of Columbia, for the county of Washington.

JOHN BALDWIN
vs.
CHARLES ELY.

The bill of complaint in this case in substance states that, the complainant was one of the citizens of the United States who had claims upon the Mexican Government, provided for by the convention between the United States and Mexico; that his claims were presented to the board of commissioners, organized under said convention, and a large sum of money was awarded to the complainant by the said board; that after said awards were made, the Treasury Department of the United States, by virtue of authority conferred upon it by Congress, made and issued to the complainant and other claimants certificates for the amount so awarded, in and by which the United States promised to pay to the complainant, or his [heirs or assigns,] the sum specified in said certificates, whenever the same should be received from the Mexican Government, or a proportionate part of the money thus received. And the complainant shews that among the certificates thus made and issued to him, there were three numbered as follows, viz., No. 989, 990, [and] 991, which were the sole and exclusive property of the complainant, and that as such he had them in his possession, and that *there* has received from the Mexican Government at the Treasury Department of the United States, large sums of money for and on account of said awards, whereof the complainant is entitled to receive his rateable proportion. And that each of said certificates is for the sum of one thousand dollars. And the bill further shews, that while the complainant was in possession of the said certificates he wrote his name on the back of them, but without any words of transfer or assignment, and still continued to hold the same as the lawful owner thereof; and that while the said certificates were thus held by him, the said three above numbered certificates were either lost by him, or as he believes stolen from his possession; that the complainant on discovering the said abstraction, notified the

Treasury Department of the fact, with a request that payment might be stopped on them; that the Secretary of the Treasury agreed to suspend their payment until the complainant should have an opportunity to obtain possession of them, or assert his right to the same by some legal proceedings; that the complainant after diligent inquiries was unable to ascertain where said certificates were, or by whom held; but that in January last application was made to the Treasury Department by the honorable Osmyn Baker, in behalf of Charles Ely, of the city of New York, stating that he held the three above enumerated certificates so as aforesaid lost or purloined from the complainant, and claiming payment for the same. And the bill further states, that as the said Osmyn Baker is a member of Congress, and not amenable to the process of this court, and that as the said Ely is a non-resident, the complainant is remediless in the premises save in this court; therefore, he prays that said defendant may be required to prove and shew to this court how the said certificates were procured from the complainant, and that he be required to produce the same before this court, and be decreed to deliver up the same to the complainant; and that the complainant may have such other relief in the premises as may be agreeable to equity and good conscience.

It is therefore ordered by the court this 24th day of December, 1844, that notice of the substance and object of the said bill be given to the said absent defendant, by publishing a copy of this order once a week for six successive weeks in the National Intelligencer, a newspaper published in this county, warning the said defendant to be and appear at the circuit court to be held for this county on the fourth Monday of March next, and to answer the said bill, otherwise the same will be taken for confessed against the said defendant.

W. CRANCH, *Ch. J.*

Whereupon the said cause was regularly continued at rules until the fourth Monday of March, 1845, when the said defendant appeared by Joseph H. Bradley, esq., his solicitor, and filed in court here the following answer, to wit:

Defendant's answer.

In chancery. Circuit court of the District of Columbia, for the county of Washington.

The answer of Charles Ely, defendant, to the bill of complaint of John Baldwin, complainant.

This defendant, now and at all times hereafter saving and reserving to himself all advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as he is advised it is material or necessary for him to make answer unto, says, that he is informed and believes, and therefore admits, as stated in the bill of complaint, that the said complainant was one of the citizens of the United States who had claims upon the Mexican government, provided

25-47
9

for by the convention between the Government of the United States of America and the Government of Mexico, referred to particularly in the said bill of complaint. And he further admits that the claims of the said complainant were presented to the Board of Commissioners organized under said convention; and that a sum of money was awarded by the said board to the said complainant, but what sum precisely in amount was so awarded this defendant knows not.

And this defendant further answering says, that he is informed and believes, and therefore admits it to be true, that after the said awards were made to the said complainant by the said Board of Commissioners, the Treasury Department of the said United States, by virtue of the authority conferred upon it by Congress, made and issued to the said complainant, and other claimants, certificates for the amount so awarded; in and by which certificates, so issued to the said complainant, the United States promised to pay to the complainant, or his assigns, the sum specified in the said certificates, whenever the same should be received from the Government of Mexico, or a proportionate part of all moneys so received.

And this defendant further answering says, that he admits it to be true, that among the certificates thus made and issued to the said complainant there were three numbered as follows, to wit, Nos. 989, (nine hundred and eighty-nine,) 990, (nine hundred and ninety,) and 991, (nine hundred and ninety-one.) And this defendant thinks it may be true, and therefore admits, that at the time the said three certificates were so issued and delivered to the said complainant they were the sole and exclusive property of the said complainant, and that they so remained until the said complainant parted with the same, as is hereinafter set forth.

And this defendant further answering admits, that there has been received at the Treasury Department of the United States large sums of money for and on account of said awards; but this defendant denies that the said complainant is entitled to receive any proportion thereof, for or on account of the said three certificates, or any or either of them; but this defendant avers and claims that he, the said defendant, is alone entitled to receive such proportions or payments as are due upon the said three certificates. And this defendant further admits that each of the said certificates is for the sum of one thousand dollars.

And this defendant further answering says, that in the month of April, in the year 1842, one Perry G. Gardiner, of the city of New York, applied to this defendant for a loan of money, and offered to this defendant as security for the payment thereof three certificates of the Mexican indemnity, similar to those referred to in the bill of complaint in this cause issued in favor of the said complainant, and endorsed by him; but what the numbers of the said certificates were this defendant does not recollect.

And this defendant further says, that, as he has been informed and believes, the said three certificates so delivered to this defendant as

aforesaid, were paid and delivered to the said Gardiner by the said Baldwin for a full and valuable consideration, and that the said Gardiner had full power to sell or hypothecate the same as owner thereof.

And this defendant further answering says, that, relying upon the security of the said certificates so hypothecated with him, this defendant loaned and advanced to the said Perry G. Gardiner, on the 23d day of April, 1842, the sum of four hundred dollars; on the 28th day of June, in the same year, the sum of one hundred and fifty dollars; on the 13th day of July, in the same year, the sum of two hundred and seventy dollars; on the fourth day of August, in the same year, the sum of three hundred and fifty dollars; and on the 8th day of August, in the same year, the sum of fifty dollars.

And this defendant further answering says, that at the time of the making of the loans and advances aforesaid, a portion of the same were made upon the promise of the said Gardiner to place further securities in the hands of this defendant for the payment of the said loan.

He further says, that on or about the thirteenth day of August, in the year 1842, the said Gardiner brought to this defendant three other certificates of the same description with those above referred to, being drawn in favor of John Baldwin, and endorsed in blank by him, and each for the sum of one thousand dollars; but what were the numbers of the said three last mentioned certificates this defendant does not recollect, and he is not aware that he at that time took any notice of said numbers. And this defendant further saith, that the said certificates were then delivered by the said Gardiner to him, to be held by him both for the security of the payment of the loans and advances already at that time made as aforesaid, and also to secure the payment of such new loans as should be made thereon. And thereupon this defendant did receive the said three last mentioned certificates as such security; and on the said 13th day of August made to the said Gardiner a further advance of three hundred dollars; and on the 26th day of September he made a further advance of fifty dollars; and on the 4th day of October he made a further advance of two hundred dollars; and on the 8th day of October he made a further advance of twenty dollars; and on the 26th of October he made a further advance of fifty dollars; and on the 5th day of November following he made a further advance of one hundred and twelve dollars; and on the seventeenth of same month he made a further advance of one hundred dollars; and on the sixteenth day of December following he made a further advance of twenty-five dollars.

And this defendant further says, that the whole amount so advanced by him to the said Gardiner, upon the security of said certificates, amounted to two thousand and seventy-seven dollars, without interest; and for the repayment of which sum all of the said certificates were pledged or hypothecated to this defendant by the said Gardiner. And this defendant further says, that at the time the said three last mentioned certificates were brought to him, the said Gardiner informed this defendant that he had full control and right to sell, pledge, or hypoth-

ecate the same; and this defendant did verily believe that the said Gardiner was the true bona fide owner thereof, by regular assignment from the said Baldwin, the complainant herein. And he further says, that he took the same as he had taken the three previously given him, without any knowledge or suspicion of any fact or circumstance that could effect or invalidate the title of the said Gardiner to the said certificates.

And this defendant further says, that he not only took the said certificates in good faith, relying upon the representations of the said Gardiner, but upon information and belief since obtained, this defendant avers and charges, that the said representations were true; that this defendant is informed and believes that the said complainant did, in fact, endorse the said three last mentioned certificates in the presence of the said Gardiner, and hand the same to the said Gardiner, for the express purpose and design that the said Gardiner should go into the market and negotiate the same, and apply the proceeds to the use of himself, the said Gardiner, in payment of moneys due and payable from the said Baldwin to the said Gardiner.

And this defendant is informed, and believes, and expressly charges the fact to be, that the said Baldwin did so endorse the said certificates with the express design and intention of passing, by such endorsement, a perfect title to said certificates to the said Gardiner, and to any other person to whom the said Gardiner might afterwards transfer them. And this defendant humbly insists that the said endorsement was intended to give, and does in law give, the right to this defendant as the holder thereof to write over the name so endorsed any words of assignment necessary or convenient to convey a perfect title in the said certificates to himself, and thus carry out the original design of said Baldwin in making such endorsements.

And this defendant further says, that in or about the month of December, in the year 1842, the said Gardiner called upon this defendant, and represented to him that the said certificates had become much more valuable in consequence of the arrangements then recently perfected between the Government of Mexico and the United States for the payment of the same, and requested this defendant to allow him to withdraw three of the said six certificates, stating that the remaining three would be sufficient as a security for the amount of the loan. And thereupon this defendant did accede to such request, and gave up to the said Gardiner three of the said certificates, and retained the remaining three for his security as aforesaid.

He further says, that some time after the said Gardiner had taken the said three certificates, he again applied to this defendant and requested to exchange them for the other three, still held by this defendant; to which this defendant, knowing no difference between them, assented. And this defendant being content to hold the said three certificates for the payment of his aforesaid advances, retained the same in his possession until the present time. And this defendant further says, that the said three certificates are now in the possession of

this defendant, and are numbered 989, 990, and 991, and are ready to be produced when this court shall direct.

And this defendant further says, that wishing to obtain the instalments paid into the Treasury of the United States, which were payable upon the said three certificates, he caused them to be presented for that purpose by his agent, the honorable Osmyn Baker, to the Secretary of the Treasury, when he was informed that payment had been stopped by the said Baldwin upon a false allegation that the same had been lost by or purloined from him.

And this defendant expressly denies that the said three certificates were ever lost or purloined from the said Baldwin, but this defendant avers and charges, that the said Baldwin himself delivered the same to the said Gardiner for the express purpose of negotiating the same.

And this defendant denies all unlawful combination or confederacy in the matter, and is ready to aver, maintain, and prove, all matters and things in this his answer alleged, as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges most wrongfully sustained.

CHARLES ELY.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

State of New York, city and county of New York, ss.

On this 22d day of March, 1845, personally appeared before me Charles Ely, the defendant above named, who being by me duly sworn, did depose and say, that he has read the said answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information and belief, and that as to those matters he believes it to be true.

S. RAPASI,
U. S. Commissioner, &c., &c.

Whereupon the said parties, by their solicitors aforesaid, filed in court here the following agreement, to wit:

BALDWIN vs. ELY. } In chancery.

Let the testimony be taken before a judge in New York, according to the act of Congress in common law cases: notice to be given to John McKeon, esq., att'y for compl't, of testimony on part of your def't, and notice to your def't of testimony on part of compl't.

RICH'D S. COXE, *for Compl't.*
JOS. H. BRADLEY, *for def't Ely.*

Agreement to take testimony.

Circuit court of the District of Columbia, for the county of Washington.

JOHN BALDWIN agt. CHARLES ELY. } In chancery.

Let the testimony be taken before a judge in New York, according to the act of Congress in common law cases; notice to be given to John McKeon, esquire, attorney for complainant, of testimony on part of your defendant, and notice to your defendant of testimony on part of complainant.

RICH'D S. COXE, *for Compl't.*
JOS. H. BRADLEY, *for def't Ely.*

Letter from P. G. Gardiner to E. Riggs.

A.

NEW YORK, *June* 14, 1843.

E. RIGGS, Esquire.

Dear sir: I received from John Baldwin certain Mexican scrip, or certificates issued by our Government, for which said Baldwin guaranteed to me seventy-five per centum. I received from him $3,000 in said scrip, not guaranteed. I sold $3,000 to you through Mr. P. Nichols. Now, sir, if you will have the kindness to exchange three of those bonds of $1,000 each with me, say numbers 989, 990, 991, for numbers 898, 899, 901, you will confer a very great on your most obedient humble servant.

P. G. GARDINER.

Made the exchange of scrip above requested, and sent the substitutes to C. and Riggs, 21st June, 1843.

Circuit court United States for the District of Columbia, for the county of Washington.

JOHN BALDWIN vs. CHARLES ELY. } In equity.

Deposition of James Bolton.

Testimony taken this 9th day of April, 1845, in pursuance of the rule heretofore annexed.

SOUTHERN DISTRICT OF NEW YORK,
City and county of New York, ss.

James Bolton, of said city, a witness on the part of the complainant, being duly sworn says, that he is now, and has been for 10 years last

past, a clerk in the employment of E. Riggs, esquire. Witness recollects that certain certificates of Mexican indemnity scrip, bearing the numbers 989, 990, and 991, were in the possession of E. Riggs previous to the 14th day of June, 1843. Mr. Riggs had them in his possession at that time. Mr. Riggs being absent from the city, Mr. P. G. Gardiner made an application to witness to exchange the certificates, numbered as above, for others which he could supply. I requested him to make his application in writing. He wrote a note addressed to E. Riggs, dated June 14, 1843, the original of which is hereunto annexed, marked A. At the time of the application by Mr. Gardiner, the certificates were in the hands of Corcoran & Riggs, of the city of Washington. They were returned by Corcoran & Riggs, and on the 21st June, 1843, they were exchanged for certain other numbers (898, 899, 901) with Mr. Gardiner; and such certificates received in exchange were sent to Corcoran & Riggs, in Washington.

Being cross examined on the part of the defendant, the witness states, that E. Riggs bought the certificates 989, 990, 991, of Perkins Nichols, a broker in the city of New York. Mr. Gardiner, at the time he made the application, said he had a dispute in reference to money matters with Dr. Baldwin, and it might be of service to him to have the exchange.

JAMES BOLTON.

Subscribed and sworn to before me, this 10th day of April, 1845.
GEO. W. MORTON, *U. S. Com'r*.

Deposition of P. G. Gardiner.

SOUTHERN DISTRICT OF NEW YORK, *ss*.

Perry G. Gardiner, a witness produced on the part of the defendant, being duly sworn deposes and says, that in the spring of the year 1842 I received some $6,000 or $7,000, at par value, of Mexican scrip from Mr. Baldwin, the complainant, in payment for part of a patent right for a cotton press sold him by James Prentiss and myself. I took a bond from Mr. Baldwin, for the full amount guarantying the payment of the scrip within a year, at 75 per cent. Of the above mentioned scrip I hypothecated with Mr. Ely, the defendant, three certificates for $1,000 each, for a loan of money made me by said Ely. This was shortly after I received them, I think in the same month. I obtained several sums of money, at different times, on this security. The exact amount I cannot state.

In August, 1842, Mr. Baldwin gave me three other certificates of $1,000 each, for the express purpose of raising money or by hypothecation. At that time I was preparing patterns for Mr. Baldwin, for the manufacture of cotton presses, on his account, to be sent to Pittsburg; which machines I sent on to Pittsburg according to his instructions. The last mentioned certificates were given me by Mr. Baldwin to raise money to pay me for these services. The numbers of these certificates

were 989, 990, and 991. The certificates were given to me by Mr. Baldwin in his room at the Mansion House, in this city. He took them out of his writing desk or portfolio, and endorsed them in my presence, and delivered them to me, and told me to get the money on them as soon as possible, as he wished me to leave with him that afternoon for Philadelphia and Pittsburg. I took the said three certificates from his hand, and went direct to Mr. Ely's store, and I gave him the certificates and he gave me some money; how much I do not recollect. Mr. Ely gave me a receipt, of which the following is a copy:

NEW YORK, *August* 13, 1842.

Received of Mr. P. G. Gardiner three certificates of one thousand dollars each, (issued by the Treasury Department of the United States,) as collateral security of moneys advanced by me.

(Signed) CHARLES ELY.

Immediately after taking the said receipt, I noted in pencil mark upon it the numbers of the certificates, viz: 989, 990, and 991. The money received I appropriated for my expenses, &c., as agreed upon *upon* between me and Mr. Baldwin, and left the same afternoon with him for Pittsburg. I told him I had raised the money on the certificates. Mr. Ely afterwards advanced me more moneys upon the security of the certificates held by him. "Counsel for complainant here objects to any evidence of the advance of money made by Ely to Gardiner after the date of the receipt. This objection was made before the answer was written down." Witness proceeds to state that, at the time he deposited the said last certificates, Mr. Ely agreed to advance further sums upon them, which he did. The entire amount advanced by Mr. Ely I cannot state. I did not inform Mr. Ely in what manner I obtained the certificates from Mr. Baldwin, nor for what purposes I had spoken to Mr. Ely the day before, asking him if he would advance me more money, on additional certificates, and he said he would. The advances were made by Ely as a friendly loan.

Mr. Ely held the whole of the six certificates, so pledged with him, until the last of December, 1842. About that time I asked Mr. Ely if he would give up three of said certificates to me, and rely upon the remaining three for his security, the certificates having then become much more valuable than when he first took them. He consented; I then went to Perkins Nichols, a broker, and employed him to sell them for me. He found a purchaser. I went to Mr. Ely to get the three certificates. He took them out of his pocket book, and gave them to me without either of us looking at them to see what numbers they were. I took them to Mr. Nichols without examining them. The other three remained with Mr. Ely. About the month of June, 1843, I was informed that the certificates last deposited with Mr. Ely, numbered 989, 990, and 991, were with other certificates advertised by Mr. Baldwin as lost or purloined. The advertisement was inserted in the

Madisonian, a paper printed in Washington, about the first of June, 1843.

I procured a copy of the Madisonian in the city of New York containing the advertisement. I think my attention was called to the advertisement [by] Dennie Sayre, or James Prentiss, or Mr. Perkins Nichols. I think by Mr. Nichols. Mr. Nichols informed me that the advertisement had created a difficulty in respect to the certificates he had negotiated for me with Mr. Elias Riggs. I, then, for the first time, discovered that the three certificates, 989, 990, and 991, had through mistake been given to Mr. Riggs through Mr. Nichols the broker, and I accordingly went to the clerk of Mr. Riggs and informed him that the three certificates which Mr. Riggs held were those which had been given to me only to hypothecate or raise money on; and asked to exchange them for three others which I absolutely owned, and which I had intended to have given him. He asked me to make the request in writing, and I wrote the letter marked A, forming part of the testimony of James Bolton. A few days after, Mr. Bolton obtained the said certificates and gave them to me. I had before asked Mr. Ely if he would exchange the three that he held for those he had given me; I do not recollect whether he asked me the reason for change. I do not recollect whether I gave any reason. He seemed busy at the time, but took the three certificates from his desk and exchanged them with me. Soon after this I saw Dr. Baldwin, showed him the advertisement, and asked him the meaning of it. He said it was to frighten Mr. Sayre and Mr. Allen who held the five other certificates mentioned in the advertisement; that he would as soon as he could raise the money, pay off Ely's advances, and take up the three certificates in controversy. To this he pledged his word. I have never paid Mr. Ely any of the advances made by him on these certificates, and I am still indebted to him for them.

Being cross examined on the part of the complainant, the witness answers as follows:

Q. You have stated that the complainant Baldwin gave you certificates of scrip to negotiate. State when and where they were delivered to you for such purpose.

A. On the 13th day of August, 1842, at the Mansion House in this city.

Q. How many certificates were given at that time, and what were their numbers?

A. There were three of $1,000 each, and numbered Nos. 989, 990, [and] 991.

Q. Were any other numbers given to you at that time?

A. No, sir.

Q. Are you certain that you said nothing to Mr. Ely, as a reason for the exchange?

A. I would not be positive as to that, although I think not.

Q. How long after you received the certificates from Mr. Riggs did you exchange them with Mr. Ely?

A. It was the same day.

Q. Did you not mention to Mr. Ely, before the exchange took place, of your desire to exchange certificates?

A. I believe I did. I will not be positive; my impression is that I did.

Q. How long before?

A. Well, that I can't; probably the same day I proposed to Mr. Riggs to exchange them.

Q. When you first spoke to Mr. Ely of the intended exchange, did you assign any reason for the transaction?

A. I don't know that I did. I don't know positively whether I did or not. I might or might not have given him a reason.

P. G. GARDINER.

Subscribed and sworn to, this 5th day of May, 1845, before me,
GEORGE W. MORTON,
U. S. Commissioner.

Deposition of G. W. Riggs.—Deposition of G. W. Riggs.

Circuit court, Washington county.

JOHN BALDWIN } In equity.
vs.
CHARLES ELY. }

George W. Riggs, being duly sworn according to law, deposes and says, that he is a member of the firm of Corcoran & Riggs, transacting banking business in the city of Washington; that by a letter received from his father, E. Riggs, dated New York, December 24, 1842, he was informed that said E. Riggs had purchased three certificates of Mexican scrip, which, from various circumstances he is satisfied were the numbers No. 989, 990, [and] 991; and that the same had thus been purchased on the 23d or 24th of said December. From another letter, dated the 6th April, 1843, it appears that said certificates were still in the possession of said E. Riggs in New York on that day. That in the month of April it was understood that, under an arrangement made with Mexico, the interest due on said certificates would shortly be paid, and said three certificates were sent on to Corcoran & Riggs for the purpose of receiving said interest. On the 16th June, 1843, deponent had learned that the said certificates were charged to have been stolen or purloined from Dr. Baldwin, in whose name they had been issued, and Mr. Riggs in New York was apprized of the difficulty, and they were sent back to New York for the purpose of being exchanged for other three of the same character, No. 898, No. 899, No. 901. This proposal to exchange must have been made in New York as early as 14th June, as on the 16th the receipt of this intelligence is mentioned in a letter from us to E. Riggs. The first named certificates were in consequence returned to New York, and the three last named were received in lieu of them. Witness cannot say that while said cer-

tificates were at this time in his hands he presented them for payment at the Treasury or not, but presumes as he knew that Dr. Baldwin had advertised them as being stolen from him, he sent them back to New York without demanding payment, which he regarded as a useless ceremony.

The certificates purchased by E. Riggs in New York in December, 1842, were bought at the rate of twenty-five per cent. on the dollar; and this witness believes was then the market value of them. On the 30th June, 1842, the interest was received by us from the Government on all the Mexican certificates then held by us for E. Riggs, including the Nos. 898, 899, 901.

It is agreed that this deposition be taken without cross examination, as if sworn to, reserving *reserving* all objections to the matter therein stated.

COXE, *for Complainant*.
JOSEPH H. BRADLEY,
November 5, 1845. *For Defendant*.

Thereupon, on motion of the said defendant by his solicitor aforesaid, it is ruled by the court here, that the said complainant enter a general replication to the answer aforesaid of the said defendant, or, in default thereof, that the said bill be dismissed.

Whereupon the said cause was regularly continued at rules until the first Monday of November, 1845, when the said complainant, by his solicitor aforesaid, filed in court here the following replication, to wit:

This complainant, saving and reserving to himself all and all manner of exceptions, &c., for replication to the answer of said defendant saith, that he doth aver, maintain, and prove his said bill to be true and sufficient in the law to be answered unto by said defendant, and that the answer is very uncertain, evasive, and insufficient in the law to be replied unto by the repliant; without that, &c., &c.

R. S. COXE, *Solicitor for compl't*.

Whereupon, with the consent of the said parties, by their solicitors aforesaid, and by order of the court here thereon, the said cause is set for hearing on the bill, answer, exhibits, depositions, and general replication.

Thereupon further process of and upon the premises aforesaid between the parties aforesaid, by consent of the said parties, by their solicitors aforesaid, and by order of the court here thereon, the said cause was regularly continued at rules until the fourth Monday of March next.

4th Monday of March.

And now, at this day, to wit, the 4th Monday of March, 1846, comes again into the circuit court here, as well the said complainant by his solicitor aforesaid, as the said defendant by his said solicitor.

Whereupon, all and singular the premises being by the court here

seen and understood, and the said parties, by their solicitors aforesaid, being heard, and mature deliberation being thereupon had, the said court made the following decree in the premises:

Decree dismissing bill.

In the circuit court of the District of Columbia, sitting in chancery, for Washington county.

JOHN BALDWIN
vs.
CHARLES ELY.

This cause coming on to be heard on the bill, answer, and exhibits filed therein, and the complainant, by his counsel, objecting to the admissibility of the evidence of Gardiner, whose deposition was taken in the said cause; and this court having heard the argument of counsel and considered the said cause, the said objection to the admissibility of the said evidence is hereby overruled; and it is this 25th day of May, 1846, ordered, adjudged, and decreed by the court, that the said bill be, and the same is hereby dismissed, and that the complainant do pay to the said defendant his costs herein, to be taxed by the clerk of this court.

By order of the court:

Test: W. BRENT, *Cl'k.*

Whereupon the said complainant, by his solicitor aforesaid, prayed an appeal from the judgment and decree of the court aforesaid, to the Supreme Court of the United States; and to him the same is granted.

Whereupon the said complainant, by his solicitor aforesaid, files in court here a certain writing obligatory, commonly called an appeal bond, in the words following, to wit:

Appeal bond.

Know all men by these presents that we, John Baldwin and Esau Pickerel, are held and firmly bound unto Charles Ely in the full and just sum of five hundred dollars, current money of the United States, to be paid to the said Charles Ely, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 23d day of April, eighteen hundred and forty-six.

Whereas lately, at a circuit court of the District of Columbia, sitting as a court of equity for Washington county, in a cause wherein the said John Baldwin was complainant, and the said Charles Ely was defendant, a decree was rendered against the said complainant, and he having entered an appeal to the Supreme Court of the United States:

Now, the condition of the above obligation is such, that if the said